

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ALBUQUERQUE ASPHALT, INC.,  
a New Mexico corporation,

Plaintiff,

v.

No. 1:23-cv-01099-MV-KK

ARROW INDIAN CONTRACTORS, INC.,  
an Arizona corporation,

Defendant

**AFFIDAVIT OF SEAN R CALVERT**

STATE OF NEW MEXICO                  }  
    }  
COUNTY OF BERNALILLO                  }

SEAN R. CALVERT, being first duly sworn, deposes and states:

1. I am over the age of eighteen years and have personal knowledge of the matters set forth in this affidavit.
2. I am, and was at all relevant times, counsel for Albuquerque Asphalt, Inc.
3. The parties agreed to attempt a mediation before Eric K. Sommer scheduled for June 3, 2023. A copy of the mediation confirmation letter from Mr. Sommer is attached as Exhibit 1 to my affidavit.
4. On May 30, 2024 Arrow Indian Contractors, Inc., through counsel, proposed settlement based on a stipulated judgment in the amount of \$393,908.65 with an agreement not to execute upon the judgment provided that Arrow Indian Contractors, Inc. made partial payments against the judgment in the amount of \$10,000 per month.
5. On May 31, 2024 Albuquerque Asphalt, Inc. made a counter-offer accepting the original terms proposed by Arrow Indian Contractors, Inc., but adding a requirement that the judgment amount be secured in the form of a surety bond or similar security. A copy of the May 31, 2024 e-mail counter-offer is attached as Exhibit 2 to my affidavit.

6. On May 31, 2024 Arrow, again through counsel, accepted and the mediation was cancelled as the parties had reached a settlement. A copy of the May 31, 2024 e-mail from Mr. Froderman is attached as Exhibit 3 to my affidavit.

7. Despite repeated requests Arrow has not provided security for the settlement and has not made payment in accordance with the terms of the agreement.

Further affiant sayeth not.



SEAN R. CALVERT

SUBSCRIBED AND SWORN to before me this 17<sup>th</sup> day of July, 2024, by Sean R. Calvert.

STATE OF NEW MEXICO  
NOTARY PUBLIC  
Jaye Nan Lawson  
Commission No. 1093547  
April 28, 2025



Jaye Nan Lawson  
Notary Public



STREET ADDRESS 2000 OLD PECOS TRAIL SANTA FE, NM 87505	MAILING ADDRESS POST OFFICE BOX 1984 SANTA FE, NM 87504-1984	t 505.982.4676 f 505.988.7029	www.SommerUdall.com Sommer Udall Law Firm, P.A.
--	--	----------------------------------	--

Eric M. Sommer  
Jack N. Hardwick  
Cullen Hallmark

Kurt A. Sommer  
Lisa G. Adelman  
Mark Kriendler Nelson

Bradley M. Odegard  
Placido D. Gonzales

Joseph A. Sommer  
(1922 - 2006)  
Retired  
Kimball R. Udall  
Robert P. Worcester  
Janet McL. McKay  
Kenneth Bateman

March 20, 2024

Via Email:

Sean R. Calvert  
8804 Washington NE, Suite E  
Albuquerque, NM 87113  
Tel. (505) 247-9100  
scalvert@hardhatlaw.net  
*Attorneys for Albuquerque Asphalt, Inc.*

Travis Jackson  
Jackson Loman Stanford Downey & Stevens-  
Block, P.C.  
201 Third Street, NW, Suite 1500  
Albuquerque, New Mexico 87102  
Tel. (505) 767-0577  
travis@jacksonlomanlaw.com

and

Troy B. Froderman  
FR Law Group  
4745 N 7th St. Suite 310  
Phoenix, AZ 85014  
Tel. (602) 601-4894  
tfroderman@frlawgroup.com  
*Attorneys for Arrow Indian Contractors, Inc.*

**Re: Mediation in the matter of *Albuquerque Asphalt, Inc. v. Arrow Indian Contractors, Inc.***

Dear Counsel:

This letter is to confirm that I will conduct a mediation between the above-referenced parties on June 3, 2024 commencing at 9:00 a.m. I appreciate your request and will provide my best efforts to assist the parties in reaching a mutually agreeable settlement. The terms and conditions of the mediation are as follows.

**We can conduct the mediation in person, by Zoom, or a combination of both. I have been successful in doing a mix of mediations where some participants are present in person, and some are on Zoom or on the phone. Just let me know which you prefer so I can reserve conference rooms at my office and schedule those who want to appear on Zoom.**

The parties agree that all statements made during the course of the mediation between the parties and/or their respective counsel and/or me, the mediator, are privileged settlement discussions, are made without prejudice to any party's legal position, and are inadmissible for any purpose in any legal proceeding. Any information disclosed to me as the mediator, by a party or by a

9775-359



representative of a party, or by a witness on behalf of a party, is confidential in the mediation. I cannot be compelled to disclose such information. The parties agree that they will not seek to compel me by subpoena or otherwise to disclose any such confidential information in any legal or administrative proceeding or otherwise. The parties further agree that they may not introduce into evidence, or use for any purpose, any written or oral testimony of mine whatsoever.

It shall also be understood and agreed that, even though I am a licensed attorney in the State of New Mexico, I am not being engaged to serve as counsel for any party in this dispute. No attorney-client relationship or work product privilege is created or attached between Sommer Udall Law Firm, P.A., or between me and any of the parties by my participation as the mediator in this matter.

My rate for services as a mediator is \$375.00 per hour. This includes time spent in the mediation as well as time spent preparing for the mediation. I am assuming that my bill will be split evenly between the parties. If this is not the case, please let me know immediately.

For larger mediations, my rate as a mediator is as follows:

<b>Number of Parties</b>	<b>Rate</b>
2 to 4 Parties	\$375.00 per hour
5 to 6 Parties	\$425.00 per hour
7 to 8 Parties	\$450.00 per hour
More than 8 Parties	\$500.00 per hour

I consider counsel responsible for their client's portion of the mediation fees. In other words, I consider that counsel have retained me to serve as the mediator in this matter and that counsel is ultimately responsible for the payment of my fees. If counsel does not wish to take on that responsibility, I would request that you make arrangements in advance with your client to deposit with me an appropriate amount for payment of the mediation fees.

I would also appreciate receiving a confidential mediation statement from each party no later than the close of business on May 30, 2024. The mediation statement may be submitted to me by email at erics@sommerudall.com, by fax at (505) 988-7029, or by delivery to my office at 2000 Old Pecos Trail, Santa Fe, New Mexico 87505.<sup>1</sup>

In addition to setting forth the factual and legal issues in this case in a concise mediation statement, I would appreciate knowing the status of any pending dispositive motions and a history of prior settlement discussions. Please include the names of the individuals who will be present for the mediation. You should also feel free to provide me with any other materials (such as expert reports, medical records, deposition excerpts, etc.) that you feel would be helpful in preparing for the mediation and/or for discussion during the mediation.

I anticipate that each party will have someone present at the mediation with full settlement authority. If for some reason the appropriate person with settlement authority is unable to be

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<sup>1</sup> As of October 10, 2022, Sommer Udall has moved its office to 2000 Old Pecos Trail, Santa Fe, NM 87505.

SOMMER | UDALL | LAW FIRM

*Albuquerque Asphalt, Inc. v. Arrow Indian Contractors, Inc.*

March 20, 2024

Page 3 of 3

physically present at the mediation, please inform me well in advance so that we can make appropriate arrangements.

Please acknowledge the parties' acceptance of the terms contained in this Mediation Agreement in the space provided below. This Agreement may be executed in counterparts. Please return the executed counterpart page to my office at your first opportunity or bring it to the mediation and deliver it to me before we begin.

Finally, if I deem it necessary, I want to let counsel know that I may contact each of you individually a day or two before the mediation to discuss any particular concerns or questions you or I might have about the mediation, all of which may expedite the mediation. You should also feel free to contact me in advance of the mediation if you would like to discuss any specific items.

I look forward to working with you on June 3, 2024 and, hopefully, reaching a resolution of this matter.

Sincerely yours,



Eric M. Sommer

**I have read and understand the terms and conditions of the foregoing mediation agreement and on behalf of the party identified below, and I agree to them as shown by my signature below:**

*Albuquerque Asphalt, Inc.*

*Arrow Indian Contractors, Inc.*

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**From:** Sean Calvert scalvert@hardhatlaw.net  
**Subject:** Fwd: Albuquerque Asphalt, Inc v. Arrow Indian Contractors, Inc  
**Date:** July 17, 2024 at 11:11 AM  
**To:** Jaye Lawson jlawson@hardhatlaw.net

Begin forwarded message

**From:** Sean Calvert <scalvert@hardhatlaw.net>  
**Subject: Re: Albuquerque Asphalt, Inc v. Arrow Indian Contractors, Inc**  
**Date:** May 31, 2024 at 3:36:32 PM MDT  
**To:** Troy Froderman <tfriderman@frlawgroup.com>

Troy

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Sorry to pestle, but do we have a deal? In principle at least?  
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FR Law Group PLLC  
4745 N. 7th Street, Suite 210  
Phoenix, Az 85014  
tfroderman@frlawgroup.com  
602-601-4894 (direct)  
602-885-3675 (mobile)

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EXHIBIT

"2"

602-601-4894 (direct)  
602-885-3675 (mobile)

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Ok. I am out of pocket beginning at 1 pm today.

Troy

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Thanks

Sean

On May 29, 2024, at 3:18PM, Susan Opperman <susan@jacksonlomanlaw.com> wrote:

Good afternoon, Sean,

Below please find a link below containing Arrow Indians Responses to Plaintiff's First Set of RFP and their Initial Disclosures.

Please do not hesitate to contact our office or Mr. Froderman with any questions. Thank you.

<https://jacksonlomanstanforddowney.sharefile.com/public/share/web-s908dbb6ec32f4b64b05f16d910033b5b>

Respectfully yours,

Susan Opperman

Paralegal to Travis Jackson, Sarah Downey, and Dyea Reynolds

Jackson Loman Stanford Downey & Stevens-Block, P.C.

201 Third Street, NW, Suite 1500

Albuquerque, New Mexico 87102

Telephone: (505) 767-0577

Fax: (505) 242-9944

Email: [susan@jacksonlomanlaw.com](mailto:susan@jacksonlomanlaw.com)

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Calvert Menicucci, P.C.  
8804 Washington St., NE, Suite E  
Albuquerque, NM 87113

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**Date:** May 31, 2024 at 3:48:41 PM MDT  
**To:** Sean Calvert <scalvert@hardhatlaw.net>

Ok, we can work that out. Will you alert the mediator we have a deal in principle?  
Troy

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Paralegal to Travis Jackson, Sarah Downey, and Dyea Reynolds  
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